



April 7, 2017

Secretary Wayne W. Williams  
Department of State  
1700 Broadway  
Suite 200  
Denver, CO 80290

Re: Mandatory Rule Review Comments

Dear Secretary Williams,

We appreciate the opportunity to submit comments in connection with the Mandatory Rule Review that you noticed on March 9, 2017 (the "Notice"). We recognize that the grounds for rule review that will be considered are limited in scope. However, we have the following comments on two rules that are currently in effect, both of which we believe should be reconsidered in light of the factors listed in your Notice.

1. Rule 7.2.7 provides that a county must issue a ballot to any eligible elector who requests one in person beginning 32 days before an election (referencing Section 1-7.5.107(2.7), C.R.S.). That statutory reference then refers to Section 1-5-402, C.R.S. that deals with the preparation of primary ballots thirty-two days prior to the primary. The rule as written says that a voter may pick up a ballot from the clerk's office at any time after that 32-day requirement for ballots (which by the terms of 1-5-402 applies only to primary ballots) and the time for mailing of ballots, which in Section 1-7.5-107(2.7) is 22 days before an election. Current practice, however, is to make "counter ballots" available 45 days prior to the election, as that is when ballots must be mailed to UOCAVA voters (see Section 1-8.3-110(1), C.R.S.). Given that the reference in Rule 7.2.7 is to a provision that internally relies upon a code section that is not correct (as it relates only to primary ballots), and given that there is a practice that has developed to rationalize and make more understandable the ability of a voter to acquire a ballot prior to the mailing date (which is 45 days prior to an election), we would ask that the rule be conformed to practice. That is, that the rule be modified to provide that ballots are available 45 days prior to an election to an eligible elector who requests one in person at the county clerk's office. We believe this revision is in accordance with criteria 3, 4, and 6 listed in the Notice.
2. Rule 7.5.10 provides that if an elector delivers a ballot to the wrong county, that county must date stamp the ballot envelope and forward it to the correct county, where it must be treated as having been received as of the date and time it was stamped. In this rule,

“wrong county” means a county other than the voter’s county of residence. The statutory foundation for this rule is Section 1-7.5-107(7), C.R.S. which states that if, by the close of polls, an elector deposits a ballot at a drop-off location outside their county of residence, the county clerk, upon discovering that fact, shall timely deliver the ballot to the clerk in the county where the elector resides, and that clerk shall accept the ballot for processing. The intent of Section 1-7.5-107(7), when passed as part of SB14-161, was to allow for cross-county drop-off of ballots. The rule as written, and as interpreted by the office of the Secretary of State, and as practiced by the county clerks in the 2016 election, does not comport with the intent of the foundational statute. The practice in the 2016 election was to aggressively discourage and make it difficult for voters to drop their ballots in locations that were not in their county of residence. This was not the intent of the statute. We believe the rule should be modified to reflect the actual affirmative intent of Section 1-7.5-107(7), C.R.S. to allow cross-county drop-offs, restating it in plain English and in a more understandable manner. We believe the revision is in accordance with criteria 3, 4, and 6 listed in the Notice.

Thank you for the opportunity to comment on the rules. Please feel free to contact me if there are any questions about these comments.

Sincerely,

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